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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/920,433	08/29/1997	KATHRYN A. HOWARD	43-97-001 0142021183	8464

7590 07/09/2003  
David G. Wille, Esq.  
Baker Botts L.L.P.  
2100 Ross Avenue  
Suite 600  
Dallas, TX 75201-2980

EXAMINER
THOMSON, WILLIAM D

ART UNIT	PAPER NUMBER
2123	

DATE MAILED: 07/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**RECEIVED**

**MAY 08 2006**

**Technology Center 2100**



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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

EXAMINER INTERVIEW SUMMARY RECORD

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MAY 08 2006

All participants (applicant, applicant's representative, PTO personnel):

(1) Chad Walters (3) \_\_\_\_\_  
(2) Kevin Teska (4) \_\_\_\_\_

Technology Center 2100

Date of interview June 27, 2003

Type: ☒ Telephonic ☐ Personal (copy is given to ☐ applicant ☐ applicant's representative).

Exhibit shown or demonstration conducted: ☐ Yes ☒ No. If yes, brief description: \_\_\_\_\_

Agreement ☒ was reached with respect to some or all of the claims in question. ☐ was not reached.

Claims discussed: N/A

Identification of prior art discussed: N/A

Description of the general nature of what was agreed to if an agreement was reached, or any other comments: \_\_\_\_\_

See attached

A fuller description, if necessary, and a copy of the amendments, if available, which the examiner agreed would render the claims allowable must be attached. Also, where no copy of the amendments which would render the claims allowable is available, a summary thereof must be attached.)

☒ 1. It is not necessary for applicant to provide a separate record of the substance of the interview.

Unless the paragraph below has been checked to indicate to the contrary, A FORMAL WRITTEN RESPONSE TO THE LAST OFFICE ACTION IS NOT WAIVED AND MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW (e.g., items 1-7 on the reverse side of this form). If a response to the last Office action has already been filed, then applicant is given one month from this interview date to provide a statement of the substance of the interview.

☒ 2. Since the examiner's interview summary above (including any attachments) reflects a complete response to each of the objections, rejections and requirements that may be present in the last Office action, and since the claims are now allowable, this completed form is considered to fulfill the response requirements of the last Office action. Applicant is not relieved from providing a separate record of the substance of the interview unless box 1 above is also checked.

Examiner's Signature

Manual of Patent Examining Procedure, Section 713.04 Substance of Interview Must Be Made of Record

A complete written statement as to the substance of any face-to-face or telephone interview with regard to an application must be made of record in the application, whether or not an agreement with the examiner was reached at the interview.

§ 1.133 Interviews

.....

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for response to Office actions as specified in § 1.111, 1.135. (35 U.S.C. 32)

§ 1.2 Business to be transacted in writing. All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete a two-sheet carbon interleaf interview Summary Form for each interview held after January 1, 1978 where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks in neat handwritten form using a ball point pen. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below.

The interview Summary Form shall be given an appropriate paper number, placed in the right hand portion of the file, and listed on the "Contents" list on the file wrapper. The booklet and serial register cards need not be updated to reflect interviews. In a personal interview, the duplicate copy of the Form is removed and given to the applicant (or attorney or agent) at the conclusion of the interview. In case of a telephonic interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the telephonic interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Serial Number of the application
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (personal or telephonic)
- Name of participant(s) (applicant, attorney or agent, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the claims discussed
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). (Agreements as to allowability are tentative and do not restrict further action by the examiner to the contrary.)
- The signature of the examiner who conducted the interview
- Names of other Patent and Trademark Office personnel present.

The Form also contains a statement reminding the applicant of his responsibility to the record the substance of the interview.

It is desirable that the examiner orally remind the applicant of his obligation to record the substance of the interview in each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form in an attachment to the Form, the examiner should check a box at the Form informing the applicant that he need not supplement the Form by submitting a separate record of the interview.

It should be noted, however, that the interview Summary Form will not be considered and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview:

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted.
- 2) an identification of the claims discussed.
- 3) an identification of specific prior art discussed.
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the examiner.
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner. The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application office. Of course, the applicant may desire to emphasize and fully describe those arguments which he feels were or might be persuasive to the examiner.
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete or accurate, the examiner will give the applicant one month from the date of the notifying letter or the remainder of any period for response, whichever is longer, to complete the response and thereby avoid abandonment of the application (37 CFR 1.135(c)).

Examiner to Check for Accuracy

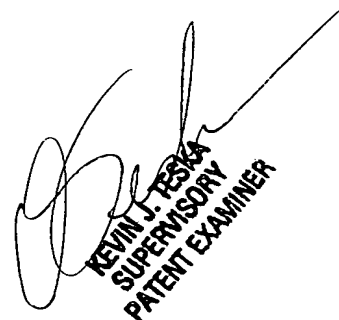
Applicant's summary of what took place at the interview should be carefully checked to determine the accuracy of any argument or statement attributed to the examiner during the interview. If there is an inaccuracy and it bears directly on the question of patentability, it should be pointed out in the next Office letter. If the claims are allowable for other reasons of record, the examiner should send a letter setting forth his or her version of the statement attributed to him. If the record is complete and accurate, the examiner should place the indication "interview record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Mr. Walters called regarding the Notice of Defective Brief mailed May 29, 2003. Mr. Walters requested relief from filing a petition, to have the examiner only consider the appealable subject matter contained in the Brief, as provided for in a decision on petition in another [unrelated] application 09/110109. Upon looking up the information in PALM, Mr. Teska noted that the inventive entity, the assignee, and the attorney of record of the instant application and that of the '109 application were different. Mr. Teska informed Mr. Walters that it would be (1) inappropriate to discuss the '109 application, and (2) even if it were appropriate, each application had to stand on it's own record. Mr. Teska also pointed out to Mr. Walters that the examiner had clearly indicated in the Notice of Defective Brief that *everything* dealing with "Issue 1" was considered petitionable subject matter and thus not appropriate under appeal. Mr. Walters felt that "Issue 1" did contain some items that were directed to appealable matter. Mr. Teska then replied that it then looked like it would be in the best interest for the applicant to provide a new brief (or at least a supplemental to "Issue 1") clearly pointing out the items within that section that the applicant considered appealable; or at least a petition pointing out those areas considered appealable. Mr. Walters requested time to consider the options.

Mr. Walters responded back within the hour. Mr. Walters indicated that he wanted to allow the examiner to determine what was petitionable and what was appealable. Mr. Teska urged Mr. Walters to reconsider as by doing what Mr. Walters was requesting would place a large burden on the examiner, and as had been discussed, Mr. Walters believed that there was appealable subject matter in the "Issue 1" section where the examiner clearly indicated that *everything* in the "Issue 1" section was petitionable. Mr. Walters reiterated that he was aware of the fact that he thought there was appealable subject matter in the "Issue 1" section, but he felt it was in the best interest of the applicant (i.e. time and money) for the examiner to make the decision of what was petitionable and what was appealable.

Conclusion – By making the above decision, Mr. Walters has acquiesced to Examiner Thomson's indication of what is considered petitionable and what is considered appealable subject matter within the Appeal Brief.

Applicant is notified that the application will not be forwarded to the examiner for a period of 30 days to allow time for the applicant to respond to this Interview Summary Form and/or submit any further response as needed. Note that any response received before the mailing of the Examiner's Answer for which entry is desired will be considered a response to the Notice of Defective Brief and will require the appropriate extension of time fees. After the 30 day waiting period, the application will be forwarded to the examiner for preparation of the Examiner's Answer. The examiner will also be instructed to indicate the petitionable subject matter and the appealable subject matter in the Brief, and only respond to the appealable subject matter.



KEVIN J. TESKA  
SUPERVISORY  
PATENT EXAMINER

<b>REVISED AMENDMENT PRACTICE: 37 CFR 1.121 CHANGED</b> <b>COMPLIANCE IS MANDATORY - Effective Date: July 30, 2003</b>
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All amendments filed on or after the effective date noted above must comply with revised 37 CFR 1.121. See Final Rule: **Changes To Implement Electronic Maintenance of Official Patent Application Records** (68 Fed. Reg. 38611 (June 30, 2003)), posted on the Office's website at: <http://www.uspto.gov/web/patents/ifw/> with related information. The amendment practice set forth in revised 37 CFR 1.121, and described below, replaces the voluntary revised amendment format available to applicants since February 2003. **NOTE: STRICT COMPLIANCE WITH THE REVISED 37 CFR 1.121 IS REQUIRED AS OF THE EFFECTIVE DATE (July 30, 2003).** The Office will notify applicants of amendments that are not accepted because they do not comply with revised 37 CFR 1.121 via a Notice of Non-Compliant Amendment. See MPEP 714.03 (Rev. 1, Feb. 2003). The non-compliant section(s) will have to be corrected and the entire corrected section(s) resubmitted within a set period.

***Bold underlined italic font has been used below to highlight the major differences between the revised 37 CFR 1.121 and the voluntary revised amendment format that applicants could use since February, 2003.***

Note: The amendment practice for reissues and reexamination proceedings, except for drawings, has not changed.

### REVISED AMENDMENT PRACTICE

#### **I. Begin each section of an amendment document on a separate sheet:**

Each section of an amendment document (e.g., Specification Amendments, Claim Amendments, Drawing Amendments, and Remarks) must begin on a separate sheet. Starting each separate section on a new page will facilitate the process of separately indexing and scanning each section of an amendment document for placement in an image file wrapper.

#### **II. Two versions of amended part(s) no longer required:**

37 CFR 1.121 has been revised to no longer require two versions (a clean version and a marked up version) of each replacement paragraph or section, or amended claim. Note, however, the requirements for a clean version and a marked up version for substitute specifications under 37 CFR 1.125 have been retained.

#### **A) Amendments to the claims:**

Each amendment document that includes a change to an existing claim, cancellation of a claim or submission of a new claim, **must include a complete listing** of all claims in the application. After each claim number in the listing, the status must be indicated in a parenthetical expression, and **the text of each pending claim** (with markings to show current changes) must be presented. The claims in the listing will replace all prior claims in the application.

- (1) The current status of all of the claims in the application, including any previously canceled, not entered or withdrawn claims, must be given in a parenthetical expression following the claim number using only one of the following seven status identifiers: (original), (currently amended), (canceled), (withdrawn), (new), **(previously presented)** and **(not entered)**. The text of all pending claims, **including withdrawn claims**, must be submitted each time any claim is amended. Canceled **and not entered** claims must be indicated by only the claim number and status, without presenting the text of the claims.
- (2) The text of all claims being currently amended must be presented in the claim listing with markings to indicate the changes that have been made relative to the immediate prior version. The changes in any amended claim must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions: (1) for **deletion of five characters or fewer, double brackets may be used (e.g., [[eroor]])**; and (2) if **strikethrough cannot be easily perceived (e.g., deletion of the number "4" or certain punctuation marks), double brackets must be used (e.g., [[4]])**. **As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strikethrough, followed by including and underlining the extra text with the desired change (e.g., number 4 as number 14 as).** An accompanying clean version is not required and should not be presented. Only claims of the status "currently amended," and "withdrawn" that are being amended, may include markings.
- (3) The text of pending claims not being currently amended, **including withdrawn claims**, must be presented in the claim listing in clean version, i.e., without any markings. Any claim text presented in clean version will constitute an assertion that it has not been changed relative to the immediate prior version except to omit markings that may have been present in the immediate prior version of the claims.

- (4) A claim being canceled must be listed in the claim listing with the status identifier "canceled"; the text of the claim must not be underlined. Providing an instruction to cancel is optional.
- (5) Any claims added by amendment must be presented in the claim listing with the status identifier "(new)"; the text of the claim must not be underlined.
- (6) All of the claims in the claim listing must be presented in ascending numerical order. Consecutive canceled, or not entered, claims may be aggregated into one statement (e.g., Claims 1 – 5 (canceled)).

**Example of listing of claims (use of the word "claim" before the claim number is optional):**

Claims 1-5 (canceled)

Claim 6 (previously presented): A bucket with a handle.

Claim 7 (withdrawn): A handle comprising an elongated wire.

Claim 8 (withdrawn): The handle of claim 7 further comprising a plastic grip.

Claim 9 (currently amended): A bucket with a green blue handle.

Claim 10 (original): The bucket of claim 9 wherein the handle is made of wood.

Claim 11 (canceled)

Claim 12 (not entered)

Claim 13 (new): A bucket with plastic sides and bottom.

**B) Amendments to the specification:**

Amendments to the specification, including the abstract, must be made by presenting a replacement paragraph or section or abstract marked up to show changes made relative to the immediate prior version. An accompanying clean version is not required and should not be presented. Newly added paragraphs or sections, including a new abstract (instead of a replacement abstract), must not be underlined. A replacement or new abstract must be submitted on a separate sheet, 37 CFR 1.72. If a substitute specification is being submitted to incorporate extensive amendments, both a clean version (which will be entered) and a marked up version must be submitted as per 37 CFR 1.125.

The changes in any replacement paragraph or section, or substitute specification must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions: (1) for deletion of five characters or fewer, double brackets may be used (e.g., [leroor]); and (2) if strikethrough cannot be easily perceived (e.g., deletion of the number "4" or certain punctuation marks), double brackets must be used (e.g., [4]). As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strikethrough, followed by including and underlining the extra text with the desired change (e.g., number 4 as number 14 as)

**C) Amendments to drawing figures:**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment, and may be accompanied by a marked-up copy of one or more of the figures being amended, with annotations. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. Any marked-up (annotated) copy showing changes must be labeled "Annotated Sheet Showing Changes" and accompany the replacement sheet as an appendix to the amendment.

The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Questions regarding the submission of amendments pursuant to the revised practice set forth in this flyer should be directed to: Elizabeth Dougherty or Gena Jones, Legal Advisors, or Joe Narcavage, Senior Special Projects Examiner, Office of Patent Legal Administration, by e-mail to [patent.practice@uspto.gov](mailto:patent.practice@uspto.gov) or by phone at (703) 305-1616.